

AMENDED IN ASSEMBLY JUNE 19, 2002

AMENDED IN SENATE MAY 14, 2002

SENATE BILL

No. 1458

Introduced by Senator Romero

February 15, 2002

An act to amend ~~Section 11710 of~~ *Sections 11710 and 11711 of*, and to repeal and add *Section 11722 of*, the Vehicle Code, relating to vehicles.

LEGISLATIVE COUNSEL'S DIGEST

SB 1458, as amended, Romero. Vehicle dealers: bonds.

(1) Existing law requires an applicant for a vehicle dealer's license to procure and file with the Department of Motor Vehicles a bond executed by an admitted surety in the amount of \$10,000. An applicant for a remanufacturer's license is required to file a bond in the amount of \$25,000.

This bill would increase the amount of the dealer's bond and the remanufacturer's bond to \$50,000.

(2) *Existing law provides that any person or governmental agency that suffers loss or damage by reason of any fraud by a licensed vehicle dealer shall have a right of action against the dealer and the surety upon the dealer's bond, as specified. Existing law also provides that a financing agency shall not be entitled to protection under the bond for any monetary interest of the financing agency that has loaned money to a vehicle dealer, but shall be entitled to protection under the bond if the financing agency is defrauded by a vehicle dealer as to any conditional sales contract acquired by way of purchase or pledge. Existing law*

furthermore provides that the claims of nonlicensees for fraud shall be satisfied first and entitled to preference over all other claims for fraud.

This bill would revise these provisions to provide that any financing agency that suffers loss or damage by reason of any fraud by a licensed vehicle dealer shall have a right of action against the dealer and the surety upon the dealer's bond, as specified; provided, however, that the claims of any other person or entity for fraud shall be satisfied first and entitled to preference over the claims of the financing agency. The bill would make conforming changes to related provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11710 of the Vehicle Code is amended
2 to read:

3 11710. (a) Before any dealer's or remanufacturer's license is
4 issued or renewed by the department to any applicant therefor, the
5 applicant shall procure and file with the department a bond
6 executed by an admitted surety insurer, approved as to form by the
7 Attorney General, and conditioned that the applicant shall not
8 practice any fraud or make any fraudulent representation which
9 will cause a monetary loss to a purchaser, seller, financing agency,
10 or governmental agency.

11 (b) A dealer's bond shall be in the amount of fifty thousand
12 dollars (\$50,000). Before the license is renewed by the
13 department, the dealer shall procure and file a bond in the amount
14 of fifty thousand dollars (\$50,000). A remanufacturer bond shall
15 be in the amount of fifty thousand dollars (\$50,000).

16 (c) Liability under the bond is to remain at full value. If the
17 amount of liability under the bond is decreased or there is
18 outstanding a final court judgment for which the dealer or
19 remanufacturer and sureties are liable, the dealer's or
20 remanufacturer's license shall be automatically suspended. In
21 order to reinstate the license and special plates, the licensee shall
22 either file an additional bond or restore the bond on file to the
23 original amount, or shall terminate the outstanding judgment for
24 which the dealer or remanufacturer and sureties are liable.

25 (d) A dealer's or remanufacturer's license, or renewal of the
26 license, shall not be issued to any applicant therefor, unless and



1 until the applicant files with the department a good and sufficient
2 instrument, in writing, in which the applicant appoints the director
3 as the true and lawful agent of the applicant upon whom all process
4 may be served in any action, or actions, which may thereafter be
5 commenced against the applicant, arising out of any claim for
6 damages suffered by any firm, person, association, or corporation,
7 by reason of the violation of the applicant of any of the terms and
8 provisions of this code or any condition of the dealer's or
9 remanufacturer's bond. The applicant shall stipulate and agree in
10 the appointment that any process directed to the applicant, when
11 personal service of process upon the applicant cannot be made in
12 this state after due diligence and, in that case, is served upon the
13 director or, in the event of the director's absence from the office,
14 upon any employee in charge of the office of the director, shall be
15 of the same legal force and effect as if served upon the applicant
16 personally. The applicant shall further stipulate and agree, in
17 writing, that the agency created by the appointment shall continue
18 for and during the period covered by any license that may be issued
19 and so long thereafter as the applicant may be made to answer in
20 damages for a violation of this code or any condition of the bond.
21 The instrument appointing the director as the agent for the
22 applicant for service of process shall be acknowledged by the
23 applicant before a notary public. In any case where the licensee is
24 served with process by service upon the director, one copy of the
25 summons and complaint shall be left with the director or in the
26 director's office in Sacramento or mailed to the office of the
27 director in Sacramento. A fee of five dollars (\$5) shall also be paid
28 to the director at the time of service of the copy of the summons
29 and complaint. Service on the director shall be a sufficient service
30 on the licensee if a notice of service and a copy of the summons
31 and complaint are immediately sent by registered mail by the
32 plaintiff or the plaintiff's attorney to the licensee. A copy of the
33 summons and complaint shall also be mailed by the plaintiff or the
34 plaintiff's attorney to the surety on the applicant's bond at the
35 address of the surety given in the bond, postpaid and registered
36 with request for return receipt. The director shall keep a record of
37 all process so served upon the director, which record shall show the
38 day and hour of service and shall retain the summons and
39 complaint so served on file. Where the licensee is served with
40 process by service upon the director, the licensee shall have and be



1 allowed 30 days from and after the service within which to answer
2 any complaint or other pleading which may be filed in the cause.
3 However, for purposes of venue, where the licensee is served with
4 process by service upon the director, the service is deemed to have
5 been made upon the licensee in the county in which the licensee
6 has or last had an established place of business.

7 *SEC. 2. Section 11711 of the Vehicle Code is amended to read:*

8 11711. (a) If any person (1) shall suffer any loss or damage
9 by reason of any fraud practiced on him *or her* or fraudulent
10 representation made to him *or her* by a licensed dealer or one of
11 ~~such the dealer's salesmen~~ *salespersons* acting for the dealer, in
12 his *or her* behalf, or within the scope of the employment of ~~such~~
13 ~~salesman~~ *the salesperson* and ~~such the person~~ has possession of
14 a written instrument furnished by the licensee, containing
15 stipulated provisions and guarantees which the person believes
16 have been violated by the licensee, or (2) ~~if any person~~ shall suffer
17 any loss or damage by reason of the violation by ~~such the dealer~~
18 ~~or salesman~~ *salesperson* of any of the provisions of Division 3
19 (commencing with Section 4000) of this code, or (3) ~~if any person~~
20 is not paid for a vehicle sold to and purchased by a licensee, then
21 ~~any such the person~~ shall have a right of action against ~~such the~~
22 dealer, ~~his salesman~~ *the dealer's salesperson*, and the surety upon
23 the dealer's bond, in an amount not to exceed the value of the
24 vehicle purchased from or sold to the dealer.

25 (b) If the state or any political subdivision thereof shall suffer
26 any loss or damage by reason of any fraud practiced on the state
27 or fraudulent representation made to the state by a licensed dealer,
28 or one of ~~such the dealer's~~ representatives acting for the dealer, in
29 ~~his the dealer's~~ behalf, or within the scope of employment of ~~such~~
30 *those* representatives, or shall suffer any loss or damage by reason
31 of the violation of ~~such the dealer or representative~~ of any of the
32 provisions of Division 3 (commencing with Section 4000) of this
33 code, or Part 5 (commencing with Section 10701), Division 2 of
34 the Revenue and Taxation Code, the state or any political
35 subdivision thereof, through the department, shall have a right of
36 action against ~~such the dealer, his the dealer's~~ representative, and
37 the surety upon the dealer's bond in an amount not to exceed the
38 value of the vehicles involved.

39 (c) The failure of a dealer upon demand to pay the fees and
40 penalties determined to be due as provided in Section 4456 hereof

1 is declared to be a violation of Division 3 (commencing with
2 Section 4000) of this code, and Part 5 (commencing with Section
3 10701), Division 2 of the Revenue and Taxation Code and to
4 constitute loss or damage to the state in the amounts of ~~such~~ any
5 fees and penalties determined to be due and not paid.

6 (d) The claims of the state under subdivision (b) shall be
7 satisfied first and entitled to preference over all claims under
8 subdivision (a).

9 (e) ~~The~~ Except as provided in Section 11722, the claims of any
10 person under subdivision (a) who is not a licensee shall be satisfied
11 first and entitled to preference over all other claims under
12 subdivision (a).

13 SEC. 3. Section 11722 of the Vehicle Code is repealed.

14 ~~11722. The bond provided for in Section 11710 shall not be~~
15 ~~conditioned to protect the monetary interest of a financing agency~~
16 ~~which has loaned money to a licensee or assignee thereof;~~
17 ~~provided, however, that as to any conditional sales contract as~~
18 ~~defined in Section 2981 of the Civil Code, acquired by way of~~
19 ~~purchase or pledge, a financing agency shall be entitled to~~
20 ~~protection under said bond if such agency is defrauded by a~~
21 ~~licensee.~~

22 SEC. 4. Section 11722 is added to the Vehicle Code, to read:

23 11722. If a financing agency shall suffer any loss or damage
24 by reason of any fraud practiced on the financing agency, or any
25 fraudulent representation made to the financing agency, by a
26 licensed dealer or by one of the dealer's representatives acting for
27 the dealer on the dealer's behalf or within the scope of employment
28 of the representative, or if a financing agency shall suffer any loss
29 or damage by reason of the violation by the dealer or
30 representative of any of the provisions of Division 3 (commencing
31 with Section 4000) of this code, the financing agency shall have a
32 right of action against the dealer, the dealer's representative, and
33 the surety upon the dealer's bond in an amount not to exceed the
34 value of the vehicles involved; provided, however, that the claims
35 of any other person or entity under Section 11711 shall be satisfied
36 first and entitled to preference over the claims of the financing
37 agency.